

GRANTED ISSUES

NOTE: THE WORDING OF THE ISSUES IS TAKEN VERBATIM FROM THE PARTIES' PETITIONS FOR DISCRETIONARY REVIEW.

ISSUES GRANTED FEBRUARY 26, 2020

| | | | |
|----------------|-------------------------------|---------------|-----------------------|
| 19-1233 | GEORGE, ANTHONY RASHAD | DALLAS | CAPITAL MURDER |
|----------------|-------------------------------|---------------|-----------------------|

Is the Fifth Court of Appeals right, or are the First and Second Courts of Appeals right? Should murder always be anticipated as a potential result of robbery?

ALPHABETICAL LISTING WITHOUT ISSUES

| <u>PDR NO.</u> | <u>NAME</u> | <u>DATE GRANTED</u> |
|----------------|------------------------------|---------------------|
| 19-0203 | ALLEN, MATTHEW JOSEPH | 06/26/19 |
| 19-0287 | ARELLANO, CESAR RAMIRO | 06/05/19 |
| 19-1072 | BARNES, DANIEL THOMAS | 12/11/19 |
| 18-1362 | BARRETT, DEWEY DEWAYNE | 10/09/19 |
| 19-1123 | BARTON, CHARLES | 11/20/19 |
| 19-0804 | BECERRA, JOE LUIS | 11/20/19 |
| 18-1383 | BELL, KENDALL | 03/27/19 |
| 18-0921 | BUCK, MICHAEL J. | 12/05/18 |
| 19-0575 | CARTER, ANTHONY | 09/11/19 |
| 19-1154-56 | CASTANEDANIETO, KEVIN | 02/12/20 |
| 19-0424 | CHAMBERS, LARRY THOMAS, JR. | 10/02/19 |
| 19-1070 | CRIDER, ROBERT LEE, JR. | 01/15/20 |
| 19-0955 | DAY, JONATHAN WILLIAM | 11/06/19 |
| 18-1299 | DIAMOND, LESLEY ESTHER | 02/13/19 |
| 19-0856/57 | DULIN, BRYANT EDWARD | 01/15/20 |
| 18-0831 | DUNHAM, MARC WAKEFIELD | 12/05/18 |
| 18-1199 | EBIKAM, OBINNA | 02/27/18 |
| 18-1090/91 | FOREMAN, NATHAN RAY | 02/13/19 |
| 19-1233 | GEORGE, ANTHONY RASHAD | 02/26/20 |
| 19-0572 | GONZALEZ, VICTOR ORTIZ | 08/21/19 |
| 19-0635 | HAGGARD, JAMES RAY | 09/25/19 |
| 19-0636 | HAMMACK, MICHAEL ANTHONY | 11/06/19 |
| 19-0799 | HARDIN, SHEILA JO | 10/02/19 |
| 19-0985 | HARRELL, ROBERT EARL, JR. | 12/11/19 |
| 19-0589 | HERNANDEZ, PEDRO, JR. | 11/20/19 |
| 19-0853 | HERRON, ROBERT | 10/09/19 |
| 16-1269 | HOLDER, CHRISTOPHER JAMES | 06/07/17 & 10/23/19 |
| 18-1339 | HOLOMAN, HAROLD WAYNE | 03/20/19 |
| 18-0552 | JONES, JORDAN BARTLETT | 07/25/18 |
| 19-0075 | LERMA, REYNALDO | 12/11/19 |
| 18-0005 | LITCHFIELD, MARGARET FAYE | 06/06/18 |
| 18-0894 | LOCH, VITH | 12/05/18 |
| 19-0956 | LOPEZ, ANTONIO | 01/29/20 |
| 18-1291 | LOPEZ, MARTIN RIVERA | 03/20/19 |
| 18-1382 | LOPEZ, RITO GREGORY, JR. | 04/10/19 |
| 19-0244/45 | LUJAN, ERLINDA | 06/05/19 |
| 19-0563 | MARTIN, CASEY ALLEN | 10/09/19 |
| 19-0810 | MATA, RICARDO | 09/18/19 |
| 19-0984 | McGUIRE, SEAN MICHAEL | 12/11/19 |
| 18-1246 | METCALF, LYDIA | 02/06/19 |
| 18-1340 | MIRANDA, CHRISTOPHER | 04/10/19 |
| 19-0202 | MONTELONGO, ALBERTO | 05/08/19 |
| 19-1044 | MORENO, RICKY | 11/20/19 |
| 19-1049 | NAJAR, ZAID ADNAN | 01/29/20 |
| 19-0963 | NICHOLSON, HARRY DONALD, JR. | 12/18/19 |
| 19-0478 | NUNCIO, LEONARDO | 08/21/19 |
| 19-1061 | ORTIZ, ORLANDO | 11/06/19 |
| 18-0474 | PARKER, ADRIAN JEROME | 06/20/18 |
| 19-0474 | PENDERGRAFT, JAMES RAY | 10/23/19 |
| 19-0645 | PHILMON, MANYIEL | 09/25/19 |
| 19-0722 | PRICE, BRADEN DANIEL | 10/09/19 |
| 19-1053 | PUGH, ALLEN BRAY | 02/05/20 |
| 19-1096 | RION, CHRISTOPHER | 01/15/20 |
| 19-0012-15 | RODRIGUEZ, ABEL DIAZ | 04/10/19 |
| 19-0242 | ROGERS, WILLIAM | 06/26/19 |
| 19-0469 | SANDERS, NATHAN | 11/20/19 |

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| 18-1265 | SENN, MICHAEL RAY | 04/10/19 |
| 18-0556 | STAHMANN, KARL DEAN | 10/10/18 |
| 19-0676 | TILGHMAN, MICHAEL JOSEPH | 09/11/19 |
| 18-0867 | TIMMINS, TROY ALLEN | 11/21/18 |
| 19-0776 | UKWUACHU, SAMUEL | 10/02/19 |
| 18-1015 | WATKINS, RALPH DEWAYNE | 12/05/18 |
| 19-0388 | WHEELER, CHASE ERICK | 09/25/19 |
| 19-0477 | WILLIAMS, ISSAC | 08/21/19 |
| 18-0870 | WILLIAMS, JAMES E. | 01/09/19 |
| 18-1247 | WORK, SIDNEY ALEX | 01/30/19 |
| 18-1226 | ZIMMERMAN, MARK DAVID | 06/26/19 |

NUMERICAL LISTING WITH ISSUES GRANTED

16-1269 HOLDER, CHRISTOPHER JAMES 06/07/17
APPELLANT'S COLLIN CAPITAL MURDER

The Court of Appeals erred in holding the State's petition to obtain the Appellant's cell phone records set forth the "specific and articulable facts" required by federal law under 18 U.S.C. section 2703(d).

Court's Own Motion 10/23/19

The Court of Appeals erred in holding the State's acquisition of Petitioner's historical cell phone records under an order issued under the federal stored communications act without a showing of probable cause in the petition was reasonable under the guarantees of privacy in Article I section 9 of the Texas constitution.

18-0005 LITCHFIELD, MARGARET FAYE 06/06/18
APPELLANT'S CORYELL MURDER

In finding the evidence legally sufficient, did the Sixth Court of Appeals fail to consider: was the jury rationally justified in finding guilt beyond a reasonable doubt?

18-0474 PARKER, ADRIAN JEROME 06/20/18
STATE'S GREGG ENGAGING IN ORGANIZED
CRIMINAL ACTIVITY;
POSSESSION OF CONTROLLED
SUBSTANCE; TAMPERING WITH
EVIDENCE

1. Is "possession with intent to deliver" a predicate offense for engaging in organized criminal activity because it falls within "unlawful manufacture, delivery...of a controlled substance," which is one of EOCA's enumerated predicate offenses?

2. Can an EOCA conviction predicated on an offense that is not a predicate be reformed to that necessarily subsumed offense?

18-0552 JONES, JORDAN BARTLETT 07/25/18
STATE'S SMITH UNLAWFUL DISCLOSURE OF
INTIMATE VISUAL MATERIAL

1. Is Tex. Penal Code § 21.16(b) a content-based restriction on speech that is subject to strict scrutiny?

2. May a court of appeals find a statute unconstitutional based on a manner and means that was not charged?

3. Is Tex. Penal Code § 21.16(b) facially constitutional?

18-0556 STAHMANN, KARL DEAN 10/10/18
STATE'S COMAL TAMPERING WITH PHYSICAL
EVIDENCE

1. Where this Court and other appellate courts have found evidence sufficient to support an 'alteration' under the tampering statute when an item's physical or geographical location is changed, did Stahmann err in failing to uphold Appellant's tampering conviction based on his undisputed 'alteration' of the pill bottle's location by throwing it away from himself and the crash site, over a fence, and into a patch of shrubbery?

2. Where the "dispositive inquiry is whether law enforcement noticed the object before the defendant tried to hide it and maintained visual contact" of the object, and law enforcement only learned of the existence and location of the evidence from a third-party witness well after Appellant threw it away, did Appellant "conceal" the pill bottle?

18-0831 DUNHAM, MARC WAKEFIELD 12/05/18
APPELLANT'S HARRIS DECEPTIVE BUSINESS
PRACTICE

1. The evidence is legally insufficient to sustain Appellant's conviction for deceptive business practice where Appellant did not make any affirmative mis-representation, the State's theory of liability was based on an omission rather than an act, and the complainant accurately understood the commercial terms when the transaction occurred.

2. Whether deceptive business practice is a "nature-of-conduct" or "circumstance-of-conduct" offense and whether the jury must agree unanimously that the defendant committed the same specific act of deception to convict him. (C.R. 87-88; 4 R.R. 103-08).

18-0867 **TIMMINS, TROY ALLEN**
APPELLANT'S

BANDERA **11/21/18**
FAILURE TO APPEAR &
BAIL JUMPING

In an issue of first impression, did the court of appeals correctly determine that the evidence is legally sufficient to support a conviction for "failure to appear & bail jumping" when a trial court revokes a defendant's bail in open court, remands the defendant to jail, and the defendant fails to report to jail as ordered?

18-0870 **WILLIAMS, JAMES E.**
STATE'S

TARRANT **01/09/19**
ATTEMPTED KIDNAPPING

1. The trial court's order correcting its prior judgment was signed while the trial court retained plenary power. Although labeled as a "Nunc Pro Tunc Order," the court of appeals concluded that the order was merely a modification of the judgment and not an order "nunc pro tunc." The court of appeals reasoned that a "nunc pro tunc" order/judgment, by definition, can only be entered after the trial court loses plenary power. Texas case law and the rules of appellate procedure suggest that the majority is incorrect. This Court should clarify the issue.

2. Trial court's order correcting a clerical error in the judgment is a valid nunc pro tunc order. Under Texas law, a nunc pro tunc order is an "appealable order" under Tex. R. App. P. 26.2 (a)(1). As such, Appellant had 30 days to file his notice of appeal. Because Appellant's notice of appeal was untimely, isn't the dissenting opinion of the Second Court of Appeals correct in concluding that Appellant's appeal should have been dismissed for lack of jurisdiction?

18-0894 **LOCH, VITH**
STATE'S

HARRIS **12/05/18**
MURDER

1. Is the failure to admonish about immigration consequences under Tex. Code Crim. Proc. art. 26.13(a)(4) harmful when the defendant was already deportable at the time of his guilty plea due to prior convictions?

2. Is the failure to admonish about immigration consequences under Tex. Code Crim. Proc. art. 26.13(a)(4) harmful when the defendant knew he was already deportable at the time of his guilty plea due to prior convictions?

3. Was the failure to admonish about immigration consequences under Tex. Code Crim. Proc. art. 26.13(a)(4) harmful when Appellant was already deportable, the evidence of guilt was overwhelming, and he was morally motivated to plead guilty?

18-0921 **BUCK, MICHAEL J.**
APPELLANT'S

EL PASO **12/05/18**
AGGRAVATED SEXUAL
ASSAULT (2 CTS)

1. By holding that Michael's waiver of the right to appeal was enforceable and that the trial court's "admonishment" that induced Michael to plead guilty did not violate Due Process and Article 26.13, the Eighth Court's opinion conflicts with decisions from this Court and the United States Supreme Court.

2. By holding that Michael's waiver of the right to appeal was enforceable and by ruling that the trial court's misstatements about its ability to cumulate the sentences—made as it sought to induce Michael to plead guilty—did not invalidate the plea, the Eighth Court's opinion creates direct conflicts with other courts of appeals on issues now pending before this Court.

3. By relying directly on bad/outdated law for the timing of an election and on the impossible scenario of the court sentencing Michael even if he pleaded guilty to the jury to reject Michael's appeal, and by not addressing Michael's argument that the trial court coerced him to plead guilty after he said he wanted a trial on trial day, the Eighth Court's opinion departs from an acceptable course of judicial proceedings and calls for this Court to exercise its power of supervision.

18-1015 **WATKINS, RALPH DEWAYNE**
APPELLANT'S

NAVARRO **12/05/18**
POSSESSION OF CONTROLLED
SUBSTANCE

While reviewing a violation of the Michael Morton Act, the Court of Appeals erred in its materiality analysis.

18-1090 **FOREMAN, NATHAN RAY**
18-1091

02/13/19

STATE'S**HARRIS****AGGRAVATED ROBBERY
AGGRAVATED KIDNAPPING**

1. The Fourteenth Court erred by holding that a magistrate could not infer from the warrant affidavit that an auto body shop would have a surveillance system. The Fourteenth Court held that before a magistrate could consider common knowledge, the matter must be "beyond dispute," a civil standard the Fourteenth Court grafted onto Fourth Amendment law.
2. The Fourteenth Court erred by holding that when officers see a surveillance system recording a location where crime occurred two weeks prior, they do not have probable cause to seize the system's hard drive unless they know what is on the hard drive prior to examining it.
3. The Fourteenth Court erred by holding that the error required reversal, even under the standard for non-constitutional error, where the State's remaining evidence was overwhelming and the defense non-existent.

18-1199**EBIKAM, OBINNA****02/27/19****APPELLANT'S****BEXAR****ASSAULT**

Whether a defendant's failure to admit the exact manner and means of an assault as set forth in a charging instrument is a sufficient basis to deny a jury charge on self-defense.

18-1226**ZIMMERMAN, MARK DAVID****06/26/19****APPELLANT'S****GRAYSON****POSSESSION W/INTENT TO
DELIVER, POSSESSION (3CTS)**

The Fifth District Court of Appeals erred by affirming the trial court's decision in denying Appellant's motion to suppress.

18-1246**METCALF, LYDIA****02/06/19****STATE'S****PANOLA****SEXUAL ASSAULT**

The court of appeals erred by striking down the jury's verdict that Metcalf was guilty as a party for the sexual assault of her daughter.

18-1247**WORK, SIDNEY ALEX****01/30/19****APPELLANT'S****MILLS****POSSESSION OF CONTROLLED
SUBSTANCE;
TAMPERING W/EVIDENCE**

1. The Court of Appeals erred when it held that prior possession and use of contraband may be admitted to prove knowledge of contraband and intent to possess contraband under Rules 403 and 404(b) of the Texas Rules of Evidence.
2. The Court of Appeals erred when it held that prior possession and use of contraband may be admitted under Rules 403 and 404(b) of the Texas Rules of Evidence to rebut the defensive theory that the defendant lacked knowledge of the presence of contraband.
3. The Court of Appeals erred when it held that prior possession and use of contraband may be admitted under Rules 403 and 404(b) of the Texas Rules of Evidence to prove the identity of the person who possessed the contraband.
4. The Court of Appeals erred when it held that prior possession and use of contraband may be admitted under the doctrine of chances.

18-1265**SENN, MICHAEL RAY****04/10/19****STATE'S****TARRANT****SEXUAL ASSAULT**

1. The court of appeals erred in concluding that section 22.011(f) of the Texas Penal Code requires the State to prove commission of an actual bigamy offense to elevate Appellant's punishment range for sexual assault to a first-degree felony offense.
2. The court of appeals' decision requiring the State to prove an actual bigamy offense under section 22.011(f) of the Texas Penal Code is contrary to *Arteaga v. State*, 521 S.W.3d 329 (Tex. Crim. App. 2017).
3. The court of appeals erred in disregarding the clarification contained in footnote 9 of *Arteaga* merely because it was relegated to a footnote.

18-1291**LOPEZ, MARTIN RIVERA****03/20/19****STATE'S****BEXAR****ASSAULT**

1. The court of appeals erred by concluding that a 112 day delay was presumptively prejudicial based on potential delay that had not yet occurred and by weighing the first Barker factor against the State.
2. The court of appeals erred by concluding that the State was responsible for the delay and by weighing the second Barker factor against the State.
3. The court of appeals erred by weighing the third Barker factor against the State without any evidence that Lopez asserted his right to a speedy trial.

18-1299 **DIAMOND, LESLEY ESTHER** **02/13/19**
STATE'S **HARRIS** **DRIVING WHILE INTOXICATED**

The majority opinion is erroneous because it results from an incorrect application of the standard of review.

18-1339 **HOLOMAN, HAROLD WAYNE** **03/20/19**
STATE'S **ANDERSON** **ASSAULT**

Is a prior conviction for family violence under TEX. PENAL CODE § 22.01(b)(2)(A) always a guilt issue simply because it can be, and often is, used as a jurisdictional element?

18-1340 **MIRANDA, CHRISTOPHER** **04/10/19**
STATE'S **EL PASO** **IMPROPER RELATIONSHIP**
BETWEEN EDUCATOR AND
STUDENT, SEXUAL ASSAULT,
SEXUAL PERFORMANCE
BY A CHILD

In holding the evidence legally insufficient to support two of Miranda's convictions, the Court of Appeals did not follow this Court's case of *Miller v. State*, 457 S.W.3d 919 (Tex.Crim.App. 2015), concerning the closely-related-crimes exception to the *corpus delicti* rule, improperly holding that the exception did not apply because the temporal relationship of one year between the offenses was too long, even though they were all part of a single criminal episode, and there were multiple victims who were not aware of each other.

18-1362 **BARRETT, DEWEY DEWAYNE** **10/09/19**
APPELLANT'S **SMITH** **ASSAULT**

1. Did the court of appeals err in holding that misdemeanor assault by striking in the face was not a lesser-included offense of family violence assault by impeding breath of circulation?
2. Do multiple physical injuries inflicted in a single attack constitute separately actionable crimes of assault or are they part of a single assault?
3. Should *Irving v. State*, 176 S.W.3d 842 (Tex. Crim. App. 2005), be overruled in light of other developments in our caselaw?

18-1382 **LOPEZ, RITO GREGORY, JR.** **04/10/19**
STATE'S **MOORE** **SEXUAL ASSAULT**

Does the enhancement under Penal Code § 22.011(f) require the State to prove the defendant committed bigamy?

18-1383 **BELL, KENDALL** **03/27/19**
STATE'S **HARRIS** **AGGRAVATED ROBBERY**

1. May appellant mount a jurisdictional attack on the certification order without having filed a timely motion in bar of prosecution as required by Texas Code of Criminal Procedure Article 4.18?
2. Does *Manuel v. State* and its progeny apply to Texas Code of Criminal Procedure Article 44.47 to procedurally default appellant from raising claims upon revocation that he could have pursued an appeal from the order of deferred adjudication?

19-0013 **RODRIGUEZ, ABEL DIAZ** **04/10/19**
19-0014
19-0015
APPELLANT'S **GALVESTON** **SEXUAL ASSAULT**

Did the court of appeals err in concluding that the enhanced penalty provision for sexual assault under Section 22.011(f) does not require proof of bigamous conduct and can be triggered solely by evidence that Petitioner was married at the time the offense was committed?

19-0075 LERMA, REYNALDO
APPELLANT'S HAYS

12/11/19
CAPITAL MURDER

1. Can an appellate court disregard the issue of error preservation so that the State has a remedy when a capital murder case is dismissed because of the State's own actions in disappearing a confidential informant?
2. Can an appellate court reverse a trial court's dismissal under TRE 508 without ever addressing the untrustworthiness of the State's position that the State does not know the identity of the confidential informant?

19-0202 MONTELONGO, ALBERTO
APPELLANT'S EL PASO

05/18/19
ATTEMPTED CAPITAL
MURDER,
ASSAULT

Whether or not the 8th Court of Appeals erred in finding that Appellant waived his right to a hearing on a properly presented and filed motion for new trial?

19-0203 ALLEN, MATTHEW JOSEPH
APPELLANT'S COLLIN

06/26/19
CONTINUOUS SEXUAL ABUSE
OF YOUNG CHILD,
INDECENCY W/CHILD

2. The panel erred when it failed to find the evidence was legally insufficient to support the jury's finding of guilt beyond a reasonable doubt as to each and every element of the offense of indecency with a child by sexual contact, especially considering the panel unilaterally substituted a date of offense contradictory to the indictment and the court's charge which created double jeopardy issues.

19-0242 ROGERS, WILLIAMS
APPELLANT'S REFUGIO

06/26/19
BURGLARY OF HABITATION

Did the Court of Appeals err in the analysis for error considering the evidence in the record of the case?

19-0244 LUJAN, ERLINDA
19-0245
STATE'S

EL PASO

06/05/19
ENGAGING IN ORGANIZED
CRIMINAL ACTIVITY (2);
TAMPERING W/HUMAN CORPSE
TAMPERING W/EVIDENCE

The Eighth Court erred in upholding the trial court's ruling that the second, in-car session of Lujan's interview was not a continuation of the first, interview-room session, because: (1) under the *Bible* factors, the second-session interview was a continuation of the first; and (2) requiring police to re-*Mirandize* a suspect if the police engage in ambiguous conduct that *could be* construed as terminating, or setting a temporal limitation on, the interrogation (and attendant *Miranda* rights) undermines the ease and clarity of *Miranda's* application by requiring officers to continually second-guess whether they made any such potentially ambiguous statements.

19-0287 ARELLANO, CESAR RAMIRO
STATE'S VICTORIA

06/05/19
DRIVING WHILE INTOXICATED

1. Does Texas Code of Criminal Procedure Article 38.23(b), the "good faith" exception, apply to warrants that do not have the magistrate's name printed or typed under his signature?
2. In a motion to suppress evidence obtained with a warrant, does the defendant bear the burden of negating the "good faith" exception?
3. Does Texas Code of Criminal Procedure Article 28.01, § 1(6), governing hearings on motions to suppress, allow a trial court to ignore a mode of evidence it made necessary?
4. The court of appeals should abate and remand to the trial court for findings and conclusions requested by the State.

19-0388 **WHEELER, CHASE ERICK** **09/25/19**
STATE'S **TARRANT** **DRIVING WHILE INTOXICATED**

2. Can an officer act in objective good faith by relying on the magistrate's approval of a warrant that is defective in form?

19-0424 **CHAMBERS, LARRY THOMAS, JR.** **10/02/19**
APPELLANT'S **WILLIAMSON** **POSSESSION OF**
CONTROLLED SUBSTANCE

Is Appellant entitled to an instruction pursuant to Article 38.23 of the Code of Criminal Procedure when there is a factual dispute regarding the officer's credibility and a conflict between his testimony and his dashcam video?

19-0469 **SANDERS, NATHAN** **11/20/19**
APPELLANT'S **LUBBOCK** **HARASSMENT**

Texas Penal Code section 42.07(a)(7) is a content-based restriction that restricts a real and substantial amount of speech as protected by the First Amendment; speech which invades privacy interests of the listener has never been held by the United States Supreme Court to be a category of unprotected speech.

19-0474 **PENDERGRAFT, JAMES RAY** **10/23/19**
APPELLANT'S **SMITH** **AGGRAVATED ASSAULT**

1. Based on these facts, Does the Twelfth District Court of Appeals' decision conflict with Kelly v. State, for granting Counsel's motion to withdraw and declaring the appeal frivolous, without first satisfying Petitioner's express request to gain access to the appellate record in order to meaningfully respond to the Ander's Brief? Kelly, 436 S.W.3d 313 (Tex. Crim. App. 2014).

2. Based on these facts, was Petitioner denied his due process and equal protection rights as declared by Anders v. California, for withholding the Appellate Record from Petitioner, unless he could provide the court with the monetary [sic] expense of \$688.00? Anders, 386 U.S. 738, 87 S.Ct. 1396.

3. Once Counsel files a motion to withdraw and an Ander's brief, should it be Counsel's responsibility to provide access of the appellate record to the Petitioner, in order to meaningfully respond to the Ander's brief?

19-0477 **WILLIAMS, ISSAC** **08/21/19**
STATE'S **BEXAR** **CONTINUOUS TRAFFICKING**
OF PERSONS

1. Did Williams preserve his request for the lesser-included offense of human trafficking when he failed to identify any evidence supporting this request and denied committing any offense?

2. Did the court of appeals err by concluding that the lesser-included offense of human trafficking was a rational alternative to continuous human trafficking?

3. The court of appeals erred by automatically reversing Williams' conviction rather than applying the standard required by Almanza.

19-0478 **NUNCIO, LEONARDO** **08/21/19**
APPELLANT'S **WEBB** **HARASSMENT**

1. Justice Rodriguez's dissent contains the same criticisms of the challenged statute that were addressed in 1983 by the U.S. Fifth Circuit Court of Appeals in Kramer v. Price. Kramer v. Price struck down the previous version of Penal Code § 42.07. The defects described in Justice Rodriguez's dissent and in Kramer v. Price have not been resolved.

2. The Fourth Court of Appeals' decision, and the text of the challenged statute depart from accepted social norms and common understandings of the meaning of the word "harassment." The Fourth Court's majority opinion, and the challenged statute, risk the criminalization of conduct that would not generally be considered 'criminal' by people of ordinary intelligence. Further, because of this disconnect between common sense and the text of the statute, the challenged statute chills emotional speech, hyperbolic speech, metaphor, sharply critical speech and sexual overtures; TRAP § 66.3 (f).

3. Texas Courts' attempts to construe § 42.07 have led to baffling decisions that show no discernible logic or pattern that can be followed. The resulting authorities constitute a case by case evaluation of whether the subject speech makes reference to an "ultimate sex act." As a result of this lack of clear guidance, the statute is overly broad and chills too much speech.

4. The Court of Appeals should settle this important question because the statute unconstitutionally delegates prosecutorial decision-making and because the potential chilling effect is broad, TRAP § 66.3(b).

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| 19-0563 | MARTIN, CASEY ALLEN | | 10/09/19 |
| APPELLANT'S | | TARRANT | POSSESSION OF |
| | | | METHAMPHETAMINE |

In *Talent v. City of Abilene*, 508 S.W.2d 592 (Tex. 1974), peace officers were distinguished from firefighters, who "(have) no roving commission to detect crime or to enforce the criminal law." Unlike fire marshals, who are peace officers, firefighters do not have general law-enforcement powers. Thus, absent an exigency that allows an officer to enter without a warrant, if a firefighter enters a home to extinguish fires or save lives and notices contraband even in plain view, that firefighter's knowledge does not "impute" to a peace officer, and the officer should be prohibited from entering the home without a warrant

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| 19-0572 | GONZALEZ, VICTOR ORTIZ | | 08/21/19 |
| STATE'S | | TARRANT | AGGRAVATED ASSAULT |

Can a jury charge applying an unalleged reckless culpable mental state for aggravated assault in a unitary application instruction cause egregious harm when applying that same reckless culpable mental state as a lesser-included offense would not even be error?

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| 19-0575 | CARTER, ANTHONY | | 09/11/19 |
| APPELLANT'S | | LUBBOCK | POSSESSION OF CONTROLLED |
| | | | SUBSTANCE W/INTENT TO |
| | | | DELIVER |

In a sufficiency analysis, may a reviewing court uphold a conviction where the offense is defined by technical elements beyond the understanding of an ordinary factfinder if no evidence on the elements was presented at trial?

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| 19-0589 | HERNANDEZ, PEDRO, JR. | | 11/20/19 |
| APPELLANT'S | | HASKELL | BURGLARY |

1. The Eleventh Court of Appeals decided an issue that is contrary to a decision of the Court of Criminal Appeals in that the appeals court decided the legal sufficiency in this case in a way that is contrary to the record and it failed to apply the legal authorities to the fact of petitioner's case?
2. The Eleventh Court of Appeals decided an issue that is contrary to a decision of the U.S. Supreme Court in that the appeals court did not apply the sufficiency legal standard set by the U.S. Supreme Court in *Jackson v. Virginia*, 443 U.S. 307 to the facts in the petitioner's case?
3. The trial court erred when it denied petitioner's motion for directed verdict because the petitioner was not guilty under the standard identified by the U.S. Supreme Court and the Texas Court of Criminal Appeals in *Jackson* and *Brooks*, respectfully?

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| 19-0635 | HAGGARD, JAMES RAY | | 09/25/19 |
| APPELLANT'S | | LIBERTY | SEXUAL ASSAULT |
| | | | INDECENCY W/CHILD |

1. Whether permitting a key prosecution witness to testify remotely by videoconference from Montana violated the Confrontation Clause of the Sixth Amendment.
2. Whether the court of appeals erroneously ignored well-established Supreme Court precedent when it conducted the harm analysis of the Confrontation Clause violation.

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| 19-0636 | HAMMACK, MICHAEL ANTHONY | | 11/06/19 |
| APPELLANT'S | | HUNT | INTERFERENCE W/CHILD |
| | | | CUSTODY |

The Court of Appeals erred by finding that the evidence was legally sufficient to find Appellant guilty of interfering with child custody because the State failed to prove beyond a reasonable doubt that Appellant knowingly violated the express terms of an order when Appellant was never served the order, never saw or read the order, and never had the terms of the order explained to him in either open court or in any other manner.

19-0645 PHILMON, MANYIEL
APPELLANT'S

TARRANT

09/25/19
AGGRAVATED ASSAULT
ASSAULT

Did the court of appeals err in holding that conviction in Count Two for assault on a family member did not violate the double jeopardy clause of the Fifth Amendment?

19-0676 TILGHMAN, MICHAEL JOSEPH
STATE'S HAYS

09/11/19
POSSESSION OF CONTROLLED
SUBSTANCE W/INTENT TO
DELIVER

The Court of Appeals erred in holding that police could not lawfully enter a hotel room to help a hotel manager evict a guest engaging in criminal activity.

19-0722 PRICE, BRADEN DANIEL
STATE'S BEXAR

10/09/19
POSSESSION OF CONTROLLED
SUBSTANCE

1. Does the ability to search a suitcase incident to a lawful arrest turn on the nature of the container?
2. Did the Fourth Court err in finding that the Texas Court of Criminal Appeals opinion in *Lalande v. State*, 676 S.W.2d 115 (Tex. Crim. App. 1984) could not be reconciled with this Court's opinion in *State v. Daugherty*, 931 S.W.2d 268 (Tex. Crim. App. 1996)?

19-0776 UKWUACHU, SAMUEL
STATE'S McLENNAN

10/02/19
SEXUAL ASSAULT

Can you have a "false testimony" claim without testimony or falsity?

19-0799 HARDIN, SHEILA JO
STATE'S NUECES

10/02/19
FRAUDULENT POSSESSION OF
IDENTIFYING INFORMATION,
FORGERY OF A GOVERNMENT
INSTRUMENT

The Thirteenth Court of Appeals erred in concluding that the officer who stopped Hardin's vehicle lacked reasonable suspicion to stop her for failing to maintain a single lane by swerving into another lane, whether or not this movement could be done safely.

19-0804 BECERRA, JOE LUIS
APPELLANT'S BRAZOS

11/20/19
POSSESSION OF FIREARM BY
FELON

In *Trinidad v. State*, 312 S.W.3d 23 (Tex. Crim. App. 2010) this Court held Article V, Section 13 of the Texas Constitution was not implicated unless evidence that a number other than exactly twelve jurors voted on a verdict received by the trial court. The uncontroverted evidence from Appellant's Motion for New Trial was a non-petit juror deliberated and voted on Appellant's verdict. Did the Court of Appeals commit error in holding Appellant's Art. V, Section 13 and statutory claims under 33.01 and 36.22 of the Texas Code of Criminal Procedure were procedurally defaulted?

19-0810 MATA, RICARDO
STATE'S HIDALGO

09/18/19
AGGRAVATED KIDNAPPING
TRAFFICKING OF PERSONS
SEXUAL ASSAULT

Do questions that would objectively aid a search for a kidnapped or missing person fall within *New York v. Quarles*'s public safety exception to *Miranda* ?

19-0853 HERRON, ROBERT
STATE'S EL PASO

10/09/19
FAILURE TO COMPLY WITH

REGISTRATION REQUIREMENTS

In holding the evidence legally insufficient to support the defendant's conviction for failing to register, specifically, that the State failed to prove that the defendant had a duty to register with the El Paso County Sheriff's Office, where there was at least "some evidence" (and specifically, direct evidence of the fact) that the Sheriff's Office was the "local law-enforcement agency" with which Herron was required to register, rather than decide merely whether there was legally sufficient evidence that, when viewed in its proper context and in the light most favorable to the verdict, could support a rational inference that Herron was, indeed, required to register with the Sheriff's Office, the Eighth Court improperly required the State to meet its evidentiary burden via the Court's preferred manner of evidentiary proof, effectively increasing the State's burden.

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| 19-0856 | DULIN, BRYANT EDWARD | 01/15/20 |
| 19-0857 | | |
| STATE'S | BURNET | INDECENCY W/CHILD AGGRAVATED SEXUAL ASSAULT (9 CTS) AGGRAVATED SEXUAL ASSAULT ("SUPER") |

1. Should an improper and prematurely assessed nonobligatory "Time Payment Fee" that penalizes the failure to timely pay a court-cost, fee, or restitution be struck?
2. In striking down court-costs and fees, does the judiciary violate separation of powers by infringing on the Legislature's power to enact costs, fees, and the state's budget and the Governor's budget power?
3. Is the "Time Payment Fee" proper because it imposes a time-frame for court-cost and fee payment and disincentivizes late payment and the failure to pay?

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| 19-0955 | DAY, JONATHAN WILLIAM | 11/06/19 |
| STATE'S | TARRANT | EVADING ARREST OR DETENTION |

1. Can an officer's attempt to detain or arrest a suspect, which is otherwise lawful, be tainted by an earlier illegality and thereby negate evading's lawful-arrest-or-detention element, just as evidence is tainted under fruit-of-the-poisonous-tree?
2. Will discovery of an arrest warrant necessarily render an attempted seizure on the warrant "lawful" (despite an earlier illegality) for purposes of evading arrest?
3. If an earlier illegality can taint the officer's attempted detention, does discovery of a warrant provide an independent source for the detention or attenuate the taint?

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| 19-0956 | LOPEZ, ANTONIO | 01/29/20 |
| APPELLANT'S | EL PASO | MURDER |

1. Whether statements made by police detectives during their interrogation of the Appellant constituted a threat to arrest and charge his wife with capital murder if, and only if, he did not confess to it himself.
2. Whether police detectives had probable cause to arrest Appellant's wife for capital murder.
3. Whether the existence of probable cause to arrest Appellant's wife for capital murder, if it existed, was sufficient to excuse threats to arrest and charge her with capital murder if Appellant did not confess to it himself.
4. Whether truthful statements made to Appellant by police detectives during their interrogation of him were sufficient to excuse threats to arrest and charge his wife with capital murder if he did not confess to it himself.
5. Whether Appellant's involuntary confession to police detectives was harmless beyond a reasonable doubt.

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| 19-0963 | NICHOLSON, HARRY DONALD, JR. | 12/18/19 |
| APPELLANT'S | NAVARRO | EVADING ARREST |

1. Whether the plain language of the evading arrest statute requires proof of knowledge that the attempted arrest or detention is lawful.
2. Whether it matters in this case; whether the evidence is legally insufficient to show that Nicholson knew he was being lawfully detained.

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| 19-0984 | McGUIRE, SEAN MICHAEL | 12/11/19 |
| STATE'S | FORT BEND | FELONY MURDER |
| | | INTOXICATION MANSLAUGHTER |

2. Does Tex. Code Crim. Proc. Art.14.03(a)(1) have an exigency requirement for warrantless arrests?
3. If Article 14.03(a)(1) has an exigency requirement for a warrantless arrest in public, it was satisfied here because the integrity of blood-alcohol-content evidence would have been compromised had Appellee been free to leave.

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| 19-0985 | HARRELL, ROBERT EARL, JR. | 12/11/19 |
| STATE'S | GRAYSON | DRIVING WHILE INTOXICATED |

The appellate court applied an important question of state law in a way that conflicts with the applicable decisions of the Court of Criminal Appeals when it mistakenly merged the *corpus delicti* standard of review with the *Jackson v. Virginia* sufficiency of the evidence standard of review — misapplying both.

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| 19-1044 | MORENO, RICKY | 11/20/19 |
| STATE'S | DALLAS | AGGRAVATED KIDNAPPING |

The trial court excluded evidence of the defendant's particular circumstances as irrelevant to the objective reasonable person standard for duress. Did the court of appeals err in finding an abuse of discretion by the trial court?

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| 19-1049 | NAJAR, ZAID ADNAN | 01/29/20 |
| STATE'S | HARRIS | EVADING ARREST OR DETENTION |

1. Was the trial judge required to believe the affidavits of defense attorneys when the State did not object to their admission, or did she have discretion to disregard their contents?
2. Does a police siren heard in the distance constitute a basis for which the trial court had no discretion but to grant a new trial as "other evidence" received during deliberations?

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| 19-1053 | PUGH, ALLEN BRAY | 02/05/20 |
| APPELLANT'S | TAYLOR | MURDER |

The Court of Appeals erred in holding the trial court acted within its discretion when it allowed the State to introduce three animations to the jury which depicted the decedent Delorme as unarmed and stationary, contrary to the evidence.

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| 19-1061 | ORTIZ, ORLANDO | 11/06/19 |
| STATE'S | LA SALLE | ASSAULT |

When a defendant is charged with "assault by occlusion" pursuant to Tex. Penal Code § 22.01(b)(2)(B), does the denial of occlusion and admission to causing different injuries entitle him to an instruction on simple assault?

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| 19-1070 | CRIDER, ROBERT LEE, JR. | 01/15/20 |
| APPELLANT'S | KERR | DRIVING WHILE INTOXICATED |

In an issue of first impression, did the court of appeals correctly hold that a blood search warrant does not need to authorize both the drawing of blood and the testing of blood despite the Court of Criminal Appeals holding that the drawing of blood and testing of blood by the government are each discrete searches implicating a defendant's Fourth Amendment rights?

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| 19-1072 | BARNES, DANIEL THOMAS | 12/11/19 |
| STATE'S | GREGG | BURGLARY |

2. The Court of Appeals has so far departed from the accepted and usual course of judicial proceedings in finding that there was harm from the admission of State's Exhibits 22 and 23 as to call for an exercise of the Court of Criminal Appeals' power of supervision.

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| 19-1096 | RION, CHRISTOPHER | 01/15/20 |
| STATE'S | DALLAS | AGGRAVATED ASSAULT |

Collateral estoppel applies only when two issues are identical. In appellant's manslaughter trial, the jury was charged to consider whether appellant "recklessly caused the death" of the complainant. In a pending aggravated assault trial, the jury will be charged to consider whether he "recklessly caused bodily injury" to a different complainant. The court of appeals held that collateral estoppel applies. Was the court right?

19-1123
STATE'S

BARTON, CHARLES

TARRANT

11/20/19
HARASSMENT

1. The court of appeals decided a facial overbreadth claim that was not preserved at trial or raised on appeal.
2. Is Tex. Penal Code § 42.07(a)(7), which prohibits harassing electronic communications, facially unconstitutional?

19-1154

CASTANEDANIETO, KEVIN

02/12/20

19-1155

19-1156

STATE'S

DALLAS

AGGRAVATED ROBBERY

1. Under the Calloway rule, is police coercion of a confession a "theory of law applicable to the case" where the appellee argues that he lacked a "full understanding" of his Miranda rights in a different statement?
2. In reviewing a trial court's ruling on a motion to suppress, the reviewing court must give deference to the trial court's resolution of the facts and review de novo the legal significance of those facts. May the court of appeals infer that a confession is involuntary as a matter of fact instead of applying the relevant legal test to the facts supported by the record?
3. In deferring to the trial court's implied resolution of the facts, must the court of appeals ignore indisputable video evidence that the defendant affirmatively waived his Miranda rights?

19-1233

APPELLANT'S

GEORGE, ANTHONY RASHAD

DALLAS

02/26/20
CAPITAL MURDER

Is the Fifth Court of Appeals right, or are the First and Second Courts of Appeals right? Should murder always be anticipated as a potential result of robbery?